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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,412	01/09/2004	Hiroyuki Takeuchi	018995-741	6381

21839 7590 07/01/2005

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EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/753,412

Applicant(s)

TAKEUCHI ET AL.

Examiner

Carolyn A. Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 8 & 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Babayan (3,450,819) for reasons of record and further see claims 8-16 of Babayan.

Applicant argues that Babayan does not teach the ratio of C8 to C10 that is set forth in the claims and that the C8 content is not disclosed as

present at 60-85%. This argument has been considered but is not persuasive because the C8 (caprylic) and C10 (capric) levels are clearly shown in Babayan' claims. Because C8 is present in such a high amount, one of ordinary skill in the art would expect that the claimed amount of C8 in the 2-position would result from the random interesterification of the fatty acids to the glycerol molecule.

Applicant urges that every detail of the claims is not in Babayan but the ordinary artisan, with some experience in fats and oils, would have been able to calculate the ratio of C8 to C10 from claims 8-16 and also be able to calculate the expected amount of C8 in the randomly interesterified triglyceride of Babayan.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babayan (3,450,819) in view of Papamandijaus for reasons of record used in rejecting claims 1-9 in the last office action.

Applicant argues that Babayan does not teach the ratio of C8 to C10 that is set forth in the claims and that the C8 content is not disclosed as present at 60-85%. This argument has been considered but is not persuasive because the C8 (caprylic) and C10 (capric) levels are clearly shown in Babayan's claims. Because C8 is present in such a high amount, one of ordinary skill in the art would expect that the claimed amount of C8 in the 2-position would result from the random interesterification of the fatty acids to the glycerol molecule.

Applicant urges that every detail of the claims is not in Babayan but the ordinary artisan, with some experience in fats and oils, would have been able to calculate the ratio of C8 to C10 from claims 8-16 and also be able to calculate the expected amount of C8 in the randomly interesterified triglyceride of Babayan.

Applicant argues that features of the claims that are not there. Weight gain or loss does not form a part of the claims. Applicant argues that Babayan does not disclose a body fat controlling function by medium chain triglycerides. This argument has been considered but is not persuasive. This is disagreed with. Example 4 clearly discloses that

medium chain fatty acids act to supply energy without depositing added body fat.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seiden in view of Babayan for reasons of record.

Applicant argues that Babayan does not teach all of the features of claim 1. This argument was considered above. Applicant argues that Babayan does not disclose a body fat controlling function by medium chain triglycerides. This argument has been considered but is not persuasive. This is disagreed with. Example 4 clearly discloses that medium chain fatty acids act to supply energy without depositing added body fat.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Menz in view of Babayan for reasons of record.

Applicant argues that Babayan does not teach all of the features of claim 1. This argument was considered above. Applicant argues that Babayan does not disclose a body fat controlling function by medium chain triglycerides. This argument has been considered but is not persuasive. This is disagreed with. Example 4 clearly discloses that medium chain fatty acids act to supply energy without depositing added body fat.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or

by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CAROLYN PADEN 6-28-05
PRIMARY EXAMINER 1761